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RUEKJCS/JOINT STAFF WASHDC
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C O N F I D E N T I A L SECTION 01 OF 02 KABUL 002468

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DEPT FOR SA/FO, S/CT, SA/A, G KATE FRIEDRICH, G/IWI DIANNE
GRAHAM
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TAGS: [PGOV](#) [PREL](#) [PINR](#) [KDEM](#) [AF](#)
SUBJECT: PARLIAMENT REJECTS SHINWARI AS CHIEF JUSTICE

REF: KABUL 2364

Classified By: POLCOUNS ANGUS SIMMONS FOR REASONS 1.4 (B) AND (D)

11. (U) SUMMARY. On May 27, the lower house of the Afghan Parliament rejected two additional Supreme Court nominations, including conservative Chief Justice Shinwari. END SUMMARY.

Vote Count

12. (SBU) The rejection of Shinwari and additional nominee Roostayi brings the total number of Supreme Court nominees rejected by the Wolesi Jirga to seven (of nine). The complete results are below (see also REFTEL):

Sheikh al-Hadees Fazel Hadi Shinwari - rejected by vote: 77 yes, 117 no, 1 invalid
Mohammad Omar Mohmand - rejected by vote: 71 yes, 84 no, 4 invalid
Mawlawi Mohammad Qasem - APPROVED by vote: 124 yes, 84 no, 3 invalid
Mohammad Qasem Hashemzai - rejected by voice vote (dual citizenship)
Mohammad Hussein Roostayi - rejected by vote: 58 yes, 130 no, 4 invalid
Shah Ali Azqar Shahrestani - rejected by vote: 92 yes, 115 no, 4 invalid
Bahaudin Baha - rejected by voice vote (green card holder)
Abdul Rasheed Rashed - rejected by voice vote (dual citizenship)
Mohammad Aleem Nasemi - APPROVED by vote: 109 yes, 100 no, 2 invalid

Debate on Procedures, not Qualifications

13. (SBU) Debate on all Supreme Court nominees was marked by

extensive debate over the protocol for having Justices appear before Parliament, and little direct debate over the qualifications or opinions of the Justices. The closest MPs came to discussion of qualifications was in the case of Shinwari, where procedural issues such as how old Justices should be, what kind of qualifications they should have, and whether they should be questioned by Parliament, all had direct application. In the end, no resolution was found to the final point of debate - whether Justices should be questioned by Parliament - and in the absence of agreement on policy, a vote on the individual nominees was taken. Chief Justice Shinwari did appear at Parliament when the slate of Supreme Court nominees was introduced, but unlike other nominees, did not answer questions from MPs.

Next Steps

14. (C) Late last week, Presidential legal advisor Azimi told PolCouns that Karzai intends to renominate the three nominees rejected for dual citizenship, on the grounds that the Constitution does not specifically state that Supreme Court Justices cannot be dual nationals (it states that Justices must be citizens of Afghanistan). Rumors are beginning to float of new names of Chief Justice nominees, but none is firm as of yet. There is only a week left for Parliament to act before its recess. It remains unclear what the GOA's strategy will be regarding the nomination of a new Chief Justice. The conventional wisdom is that the new nominee will be another conservative. But given the short time frame, it may be difficult for Parliament to act before it returns to regular session at the end of July. While Shinwari must ultimately step down from the Supreme Court, he

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is expected to retain his position as head of the Ulema Council.

Comment

15. (C) The rejection of Shinwari was not a rejection of the conservative values he symbolizes to the West. Reasons for votes against Shinwari ranged from policy - MPs who believed that he intervened politically in cases (such as that of Abdul Rahman) or was soft on corruption in the judiciary - to pragmatic - some MPs felt he is simply too old for the job. There is a general perception, though, that one motive for his rejection was a backlash by non-Pashtuns against a perception that Pashtuns were getting more than their fair share of nominations. END COMMENT.
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